IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

NO. 461

JOHN J. BECK, et al.,

Appellants,

vs.

VERA M. BINKS, Director of the Department of Registration and Education of the State of Illinois,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

APPELLEE'S MOTION TO DISMISS THIS APPEAL BECAUSE NO FEDERAL QUESTION IS PRESENTED AND THE QUESTION THAT APPELLANTS SEEK TO PRESENT IS NOT SUBSTANTIAL.

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Appellee moves this court to dismiss this appeal because:

(1) The Supreme Court of Illinois did not decide any Federal constitutional question in this case. On the contrary, that court affirmed the decision of the Su-

perior Court of Cook County, Illinois, because the plaintiffs' complaint did not present any "actual controversy" within the meaning of the Illinois Declaratory Judgment Act (Ill. Rev. Stats. 1959, Ch. 110, par 57.1, page 1045).

(2) The questions that appellants seek to present to this court, that is, the question of the constitutionality of the Illinois Medical Practice Act (Ill. Rev. Stats. 1959, Ch. 91, pars 1 to 16x, pp. 531 o 541) is not substantial.

(3) The appellants' rights are exactly the same whether the Illinois Medical Practice Act as construed by appellee, the Director of the Department of Registration and Education of the State of Illinois, is or is not constitutional.

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Attorney General of the
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Counsel for Appellee.

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GROUNDS RELIED ON IN SUPPORT OF THE MOTION.

As appears from the opinion of the Supreme Court of Illinois, 19 Ill. 2d 72, 165 N. E. 2d 292, *Jurisdictional Statement, Appendix A*, the plaintiffs filed a complaint for declaratory judgment alleging that they "have been and are being trained to treat human ailments without drugs or medicines and without operative surgery by that system or method of treating human ailments known as naprapathy." They seek a declaratory judgment "that naprapathy be declared a legitimate system of treating human ailments within the purview of" the Illinois Medical Practice Act (Ill. Rev. Stat. 1959, Ch. 91, par. 5) "and that examination and licensing of practitioners of that system be declared a legitimate subject of regulation thereunder."

The Superior Court of Cook County dismissed the complaint for failure to state a justiciable controversy.

The Supreme Court of Illinois affirmed.

I.

The decision of the Supreme Court of Illinois rests upon the adequate State ground that no justiciable controversy was stated under the Illinois Declaratory Judgment Act.

Declaratory judgments are statutory innovations unknown to the common law or equity. The Supreme Court of Illinois said in its opinion in this case (*Appellants' Appendix A*, p. 14):

> "At the outset we are confronted with the question of whether the complaint states a cause of action under the provisions of the declaratory judgment section of the Civil Practice Act. (Ill. Rev. Stat. 1957, chap. 110,

par. 57.1.) It provides in part: "The court may, in cases of actual controversy, make binding declarations of rights, * * * at the instance of anyone interested in the controversy, * * *." That provision does not authorize a court to grant declarations of rights involving mere abstract propositions of law without regard to the interests of the parties. An actual controversy must exist before a declaration of rights may be made. (*Exchange Nat. Bank v. County of Cook*, 6 Ill. 2d 419; *Spalding* v. *City of Granite City*, 415 Ill. 274.) Applying the foregoing to this case, we find that the complaint is deficient in two respects. First, the allegations of schooling and training do not establish that plaintiffs have a sufficient interest in the subject matter to maintain a declaratory action. Second, since there is no attempt to define naprapathy, nor does that system of treatment come within the ambit of judicial notice, it cannot be ascertained whether an actual controversy exists. As was aptly argued by the defendant, for aught that appears, naprapathy may be but a variant of osteopathy or chiropractic, both of which are already regulated by the Medical Practice Act. In our opinion the complaint does not present a justiciable question.

"The judgment of the superior court of Cook County is affirmed.

Judgmen firmed."

It is thus apparent that the Supreme Court of Illinois did not decide any Federal question. Nor was its refusal to decide such a case a subterfuge to avoid decision.

For this reason alone, the judgment appealed from should be dismissed.

II.

The constitutional question that appellants seek to tender is not substantial.

As the Supreme Court of Illinois observed, the Illinois Medical Practice Act provides for the licensure of "osteo-

paths" and "chiropractors", as well as for the practice of medicine and surgery in all of its branches by doctors of medicine and surgeons.

As the court said (*Appellants' Appendix A*, p. 14):

> "As was aptly argued by the defendant, for aught that appears, naprapathy may be but a variant of osteopathy or chiropractic, both of which are already regulated by the Medical Practice Act. In our opinion the complaint does not present a justiciable question."

Moreover, although the Illinois Supreme Court has thus far adhered to the view that a statute that discriminates against recognized systems for the treating of human ailments, such as chiropractic and osteopathy, but forbidding licensure to others than persons licensed to practice medicine and surgery in all of its branches, appellants cite no decisions of this court and there are none that support this archaic view.

We think it quite obvious that, so far as the Fourteenth Amendment is concerned, Illinois may require anyone who practices medicine, osteopathy, chiropractic or naprapathy, to be licensed to practice medicine and surgery in all of its branches.

III.

Appellants' rights are exactly the same whether the Illinois Medical Practice Act as construed by the Director of Illinois' Department of Registration is or is not constitutional.

Appellee, Illinois' Director of Department of Registration and Education, construes Illinois' Medical Practice Act as excluding "naprapaths" from any kind of licensure. Appellants contend that as thus construed, the Illinois act is unconstitutional.

If Illinois is correct in her construction of the Act, appellants are constitutionally excluded from licensure. If appellants are correct in their contention that the Act as thus construed is unconstitutional, then no one in Illinois, *including appellants*, is entitled to any kind of license for the treatment of human ailments except a license to practice dentistry under Illinois Dental Practice Act.

Since all that appellants pray is a declaratory judgment that they are entitled to a license to treat human ailments, since they are not entitled to this license if the Act as construed by appellee is constitutional and since no one, including appellants, is entitled to a license under the Act if it is unconstitutional, no constitutional question can possibly be considered on this appeal.

Respectfully submitted,

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